Supreme Court, U.S.
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No. 04-561

In the Supreme Court of the United States

S.L., BY HER MOTHER, CYNTHIA LEE,
Petitioner,

v.

PRINCE WILLIAM COUNTY SCHOOL BOARD,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

Petitioner, S. L. respectfully submits that in their Brief In Opposition, Respondents have intentionally stated misleading information as though it were factual. Therefore, Petitioner S.L. humbly submits that the misconceptions must be responded to in order to address the new points raised in the Respondent's Brief In Opposition.

INTRODUCTION

Though the parties to this suit are entitled to their respective allegations against and denials of each alleged factual assertions made by the Petitioner; the resolution of factual claims is not necessary to the disposition of legal and constitutional issues that are stated here in. The relevance to the Petitioner's claim is that the issues presented in her Petition For Writ of Certiorari are of exceptional importance and capable of reoccurring, yet evading review.

I.

Respondents assert that the child study plan, which was given to S.L. en lieu of special education services, "does not amount to special education services." (page 5 p. 3 of the Brief In Opposition). Contrary to Respondents' contention, the child study committee used the "Student Information Classroom Modifications" special education form to give S.L. specialized and individualized instruction in the general education environment. (JA, Ex. K59). The use of this form verifies that the child study committee did indeed provide her with special education services through her child study plan.

II.

The Respondents stated that the teacher education reports submitted for review during the February 7, 2002 child study meeting "indicate that the teachers' primary concern for S.L. was her failure to use her time wisely, to stay motivated, and to pay attention and stay on task." (Respondents' Brief Of Opposition page 6, p. 2.). Contrary to Respondent's allegation, in addition to Mr. Muster's February 5, 2002 report, which states that S.L. has "low endurance" and her weakness is "physical ability"; and Mr. Hearne's February 7, 2002 teacher report, which states that S.L.'s physical problems in his class is her "posture due to fatigue", the following teacher reports, (JA, Ex. K63), were submitted:

1. Mr. Lockhart –10th grade World Geography February 4, 2002 Teacher Educational Report states that S.L.'s strengths are as follows: S.L. is very pleasant, she has a positive attitude about Geography, and does assignment consistently.
   Weaknesses – Test performance, takes her time, suspect that she reads slowly.
   Work Habits – Could pay better attention in class, and take better notes
   Peer and Adult Relationships – Very friendly to peers and me
   Instructional Strategies – S.L. receives individual help in just about everything that is done in the class to include tests, assignments, projects, notes, etc.

2. Mr. Hoefler – English February 5, 2002 Teacher Educational Report states that S.L.'s strengths are as follows: Verbal expression

Weakness – Organization; staying on task; written expression
Work Habits – Recently has been drifting off task and forgetting
Peer and Adult Relationships – "No problems"
Instructional Strategies – Sit near front of room to monitor; take writing needs into consideration

3. Ms. Evans 10th grade Biology February 6, 2002 Teacher Educational Report states that S.L.'s strengths are as follows: Cooperative activities with group participation
Weakness – Organization, completion of assignments
Work Habits – Take time on complex tasks, able to work quietly and diligently. Can quickly finish simple tasks
Peer and Adult Relationships – Good, very respectful and cooperative
Instructional Strategies – Extra time, wait time for answers, use of visual transparencies for better note taking

4. Mr. Hollenbeck 10th grade Geometry February 6, 2002 Teacher Educational Report states that S.L.'s strengths are as follows: S.L. is cooperative and courteous. She comes in after school on Tuesdays and Thursdays for extra help on assignments. S. L. is well behaved in class.
Weakness – S.L. has very weak math skills. Her lack of Algebra skills has been a hindrance for her in Geometry.
Work Habits – S.L. comes in regularly after school to get extra help.
Peer and Adult Relationships – S.L. gets along

> well with peers and adults. She has no discipline referrals
> Instructional Strategies – At the beginning of each chapter S.L. is given a chapter assignment sheet with the topics, vocabulary words and assignments. (etc.).

The reports reveal that S.L. did indeed strive to succeed in all of her classes, however fatigue played a major role in her ability to put forth her best effort. Furthermore, the "instructional strategies" reveal that S.L. did indeed receive specialized, individualized instruction, accommodations and modifications in all of her classes through the child study plan. Although S.L.'s mother objected, during the March 21, 2002 child study review plan meeting, the child study plan was amended and placed on the "Child Study Minutes" form as oppose to the detailed "Student Information Classroom Modifications" form that the plan was originally placed. (JA, Ex. K76). As amended, S.L. lost many of her modifications and accommodations.

III.

The Respondents allege that the, "Hearing Officer did not give undue weight to the testimony of any one witness, and did not exclude any offered evidence from consideration." (Respondent's Brief In Opposition page 10 p. 1). The Petitioner disagrees with the Respondents' claim. In reality, the hearing officer received medical reports that detailed S.L.'s fatigue, swollen glands, and chronic reoccurring infections. (JA, Ex. K99). Therefore, the Petitioner alleges that the hearing officer did give undue weight to the testimonies of the school officials and excluded pertinent, factual evidence offered from the submitted medical records, Petitioner's expert witness and her mother.

For example, during the due process hearing, S.L.'s mother testified that she did indeed take S.L. to the ear, nose, and throat (E.N.T.), doctor. Medical documentation was also admitted into evidence for the hearing officer's viewing, which supported Ms. Lee's testimony. Although testimony was rendered and evidence was submitted, the hearing officer completely disregarded the testimony as well as medical records and wrote erroneously in his June 13, 2002 Decision page 7, as follows: "Although the Mother asked for and received a referral to an ear, nose, and throat specialist, Shaunte never went to see that doctor", as part of his justification for denying S.L. special education services.

IV.

Respondents state in their Brief In Opposition that the "Petitioner did not raise the issue of alleged fraudulent testimony with the Hearing Officer during the course of the hearing." (Brief In Opposition page 10 p. 1). The Petitioner disagrees with the Respondents' misleading statement. In reality, the Petitioner referenced the alleged fraudulent testimony throughout all of the proceedings. During the due process hearing, the Petitioner's lawyer brought to the attention of the hearing officer the discrepancy between Mr. Muster's (S.L.'s P.E. teacher) testimony during the May 9, 2002 due process hearing when he described S.L. as an energetic student who "participated equally with the other students", and his February 5, 2002 Teacher Education Report when he described S.L.'s physical problem as "low endurance" and weakness being her "physical ability." (pages 230 - 231 of the verbatim transcript of the May 9, 2002 Due Process Hearing). S.L.'s lawyer also questioned Ms. Evans (step team coach/Biology teacher), during the due process hearing by using references from S.L.'s mother's testimony during the due process hearing, which alleged that

Ms. Evans had placed S.L. on team "B" due to "low endurance." It is documented that Ms. Evans testified that S.L. was not placed on team "B" due to low endurance but she was placed on team "B" because it was her first year stepping in high school. (pages 165-166 of the verbatim transcript of the May 9, 2002 Due Process Hearing). The Petitioner alleges that the hearing officer did not give adequate weight to her attorney's comparisons in his June 13, 2002 Decision. Instead of acknowledging the discrepancies between Mr. Muster's February 5, 2003 Teacher Education Report and his May 9, 2003 due process testimony as presented by S.L.'s attorney, the hearing officer referenced Mr. Muster's verbal testimony as factual, in his June 13, 2002 Decision. (Due Process Hearing Officer's Decision page 6 p. 2-3). The hearing officer also referred to Ms. Evans's alleged fraudulent testimony to justify his Decision to deny S.L. special education services. (IBID page 4 p. 2 and page 6 p. 4).

V.

Respondents referenced the district court judge's September 8, 2003 Decision which states that the Petitioner did not present the argument of "perjured testimony" in her initial appeal. (Respondents' Brief In Opposition page 12). However the district court judge's conclusion in his September 8, 2003 Decision was erroneous. Petitioner did indeed reference the argument of "perjured testimony" in her initial appeal. The reference was argued in front of the judge on February 21, 2003 and the district court judge responded to the allegation of fraudulent testimony in his February 24, 2003 Decision. The district court judge's response in his initial Decision dated February 24, 2003, supports Petitioner's assertion that she did indeed reference "perjured testimony" in the initial district court proceeding.

VI.

The Respondents also contend that the district court judge did not admit S.L.'s additional evidence, which was submitted in her September 23, 2003 Motion to Set Aside Judgment Pursuant to Fed. R. Civ. P. 60(b)(6). (Respondents' Brief In Opposition page 12). The Petitioner disagrees with Respondents' contention. In his October 24, 2003, Decision the district court judge acknowledged the request to admit additional evidence. This acknowledgment is perceived by the Petitioner as an admittance of evidence because the district court judge had in his discretion the ability to formally decline the Petitioner's request to admit the additional evidence, however he chose not to reject its admittance but to acknowledge the request for admittance.

REASONS FOR GRANTING THE WRIT

A. THE PETITION FOR WRIT OF CERTIORARI SHOULD SURVIVE DISMISSAL DUE TO COMPELLING STATE INTEREST

Respondents allege that the Equal Protection Clause is not implicated by Petitioner's claims because her claim is raised against the hearing officer and the district court judge and not against the School Board. However, Petitioner stands in disagreement. Indeed Petitioner alleges that the School Board erroneously declared that her sickle cell disease did not adversely impact her educational environment, which inhibited her from receiving a free appropriate public education as stated in IDEA '97. The School Board's denial of special education services to S.L. is in direct conflict of the Equal Protection Clause of the 14th Amendment to the U.S. Constitution and IDEA '97.

Petitioner in so many words, has always asserted that she is protected as a member of a recognized suspect class for the purpose of Equal Protection. In denying S.L. special education services based on the pretense that she has a "mild" form of sickle cell disease, the hearing officer and district court judge demonstrated eraga omnes. Meaning, the Decision will set a precedence that could hinder the recognized class of students with sickle cell disease, from receiving their lawfully guaranteed, free appropriate public education. see (Dr. Rana's Telephonic Testimony May 7, 2002 pages 8-10). Inter alia, the people of Virginia care about the receipt of special education services for disabled students. Evidence of this fact is documented in the Code of Virginia 22.1-215. Thus, the Petitioner's Writ Of Certiorari should be granted due to Compelling State Interest.

B. THE PETITION FOR WRIT OF CERTIORARI SHOULD SURVIVE DISMISSAL BECAUSE PUBLIC EDUCATION PROVIDES "A CONCLUSION OF NON-MOOTNESS, BECAUSE IT IS "CAPABLE OF REPETITION, YET EVADING REVIEW"

The Respondents allege that the issues at hand are not "capable of repetition, yet evading review". However, Petitioner alleges that in their Decisions the hearing officer and district court judge erroneously categorized S.L.'s form of sickle cell disease as "mild", thus setting precedence for future generations of sickle cell disease students to be mandated to adhere to their findings. Therefore, jurisdiction of this honorable Court is not ultra vires. In reality, this honorable Court may maintain its jurisdiction over the present case ipso facto that sickle cell disease is inherited and as in Roe v. Wade, there is a reasonable likelihood that S.L. will bear a child that has sickle cell disease therefore S.L. could again suffer the same deprivation that gave rise to her claim.

In addition, as in Roe v. Wade, this honorable Court may maintain its jurisdiction ipso facto that intergenerational rights of future students who stand in need of special education services may suffer the denial of special education services based on their form of the disease. Therefore, this case is a classic justification for a conclusion of non-mootness, due to the fact that it is "capable of repetition, yet evading review."

C. THE PETITION FOR WRIT OF CERTIORARI SHOULD SURVIVE DISMISSAL BECAUSE PUBLIC EDUCATION AND THE PROVISION OF SPECIAL EDUCATION SERVICES IS AN IMPORTANT QUESTION OF FEDERAL LAW

Inter alia, the issues that were properly before the Court Of Appeals encompassed the hearing officer's Decision as well as the district court judge's affirmation of the hearing officer's Decision. Indeed, the case presented to the Fourth Circuit Court of Appeal included all of the issues set forth by the Petitioner as well as the additional evidence that was rendered in Petitioner's Motion To Set Aside Judgment. (see Petitioner's September 23, 2003 Motion To Set Aside Judgment Pursuant to Fed. R. Civ. P. 60(b)(6)).

Contrary to the basis of Respondents' objection, the Petitioner has profoundly placed before both the district court judge as well as the Fourth Circuit Court of Appeal the first question presented in her Petition For Writ Of Certiorari. The U.S. Fourth Circuit Court Of Appeal's panel of justices erred when they did not address the questions that were raised, which were of exceptional importance to the proceedings. The U.S. Fourth Circuit Court of Appeals also erred when the panel did not site material fact or law that would substantiate the district court's denial of the Petitioner's Motion To Reconsider Plaintiff's Motion To Set Aside Judgment. (U.S.

Fourth Circuit Court Of Appeal's Decision dated June 17, 2004). Ipso facto the first question is indeed properly placed before this honorable Court. Therefore, the Petitioner humbly requests that this honorable Court overrule the Respondent's objection and recognize the first question, which is stated in her Petition For Writ Of Certiorari. The Petitioner also prays that the honorable Court will grant her Petition For Writ Of Certiorari because the provision of special education services is an important question of federal law which has been decided by The United States Court Of Appeals, Fourth Circuit that has not been, yet should be, settled by this Court.

D. THE AWARD OF ATTORNEY'S FEES ARE WARRANTED

The Respondent has concluded that the award of attorney's fees is not proper because the Petitioner is not the "prevailing party". However, if this honorable Court finds in favor of the Petitioner, than she will be the "prevailing party" and will then be entitled to receive attorney's fees in accordance with IDEA 20 U.S.C. 1415 (i)(3)(b). Therefore the request for attorney's fees is proper. The Petitioner is well aware of the fact that she can not collect attorney's fees for the period of time in which she was appearing pro se.

CONCLUSION

For all of the foregoing reasons the Petitioner humbly requests this honorable Court to grant her Petition For Writ Of Certiorari.

Respectfully submitted,

Cynthia Lee
on behalf of her daughter S.L. pro se